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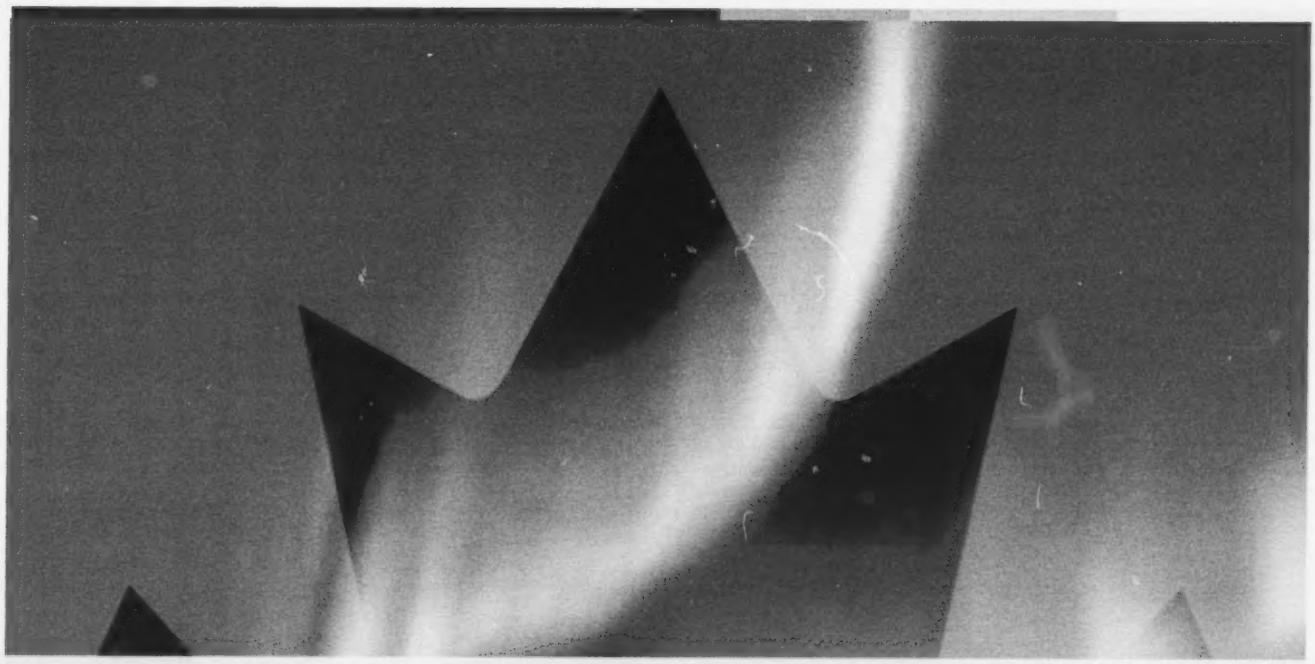
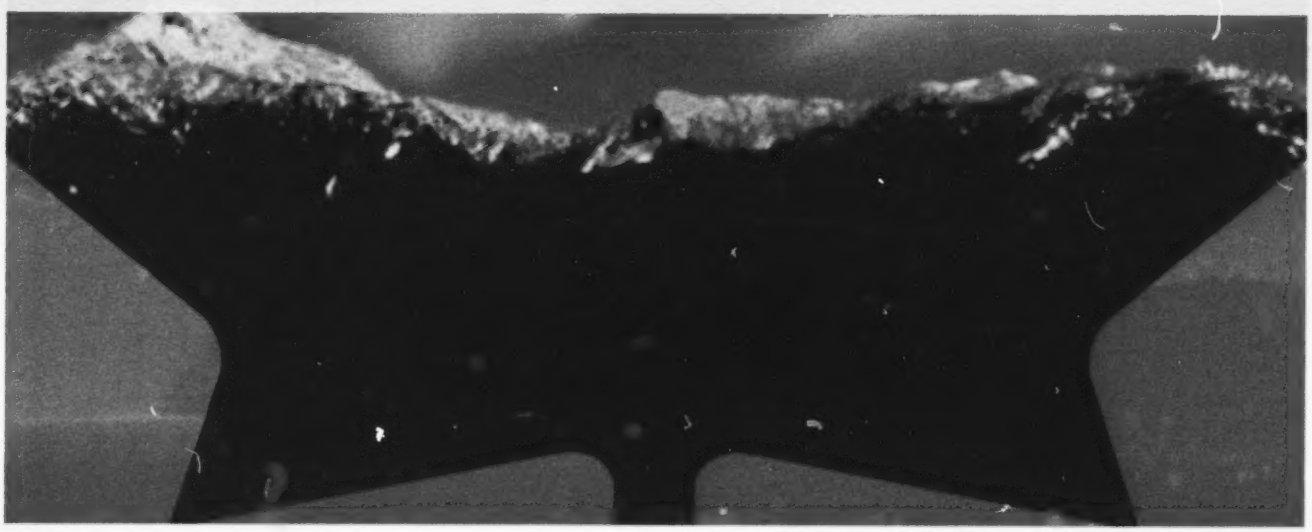


# CREATING FIRST NATIONS, INUIT AND MÉTIS LANGUAGES LEGISLATION

## 2018 Discussion Guide



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# A Message from Minister Joly

The mandate letter addressed to me in 2015 by the Right Honourable Justin P.J. Trudeau states that "no relationship is more important [...] than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership". I was also tasked to work in collaboration with the Minister of Indigenous and Northern Affairs at the time on preserving, promoting and enhancing Indigenous languages and cultures.

The Government of Canada embarked on a meaningful and historic undertaking, announced by the Prime Minister in December 2016; specifically, our commitment to enact an Indigenous Languages Legislation, co-developed with Indigenous Peoples. It is with great humility and honour that I am leading this work on behalf of the Government of Canada.

In June 2017, together, the Government of Canada, along with the Assembly of First Nations, Inuit Tapiriit Kanatami and the Métis Nation launched the co-development of Indigenous languages legislation and agreed on a collaborative engagement approach, in which Canadian Heritage and the three partners would each engage Indigenous language specialists, language keepers and experts to begin thinking through what should be considered in the legislation.

Since then, my Parliamentary Secretary, Arif Virani, and I have taken part in a number of engagement sessions throughout Canada with First Nation, Inuit and Métis Indigenous language practitioners and experts. The Assembly of First Nations, Inuit Tapiriit Kanatami and the Métis Nation have also engaged their constituent language experts. The results of those sessions assist in forming the basis of the elements for considerations in this discussion guide. I have had and will continue to have dialogue on the Frist Nation, Inuit and Métis languages legislation with my counterparts in the provinces and territories.

The next step is to further flesh out our collective thinking on what this legislation could address and how it could be structured. As charged by the Prime Minister in my mandate letter, my intension is to do this in a spirit of respect, co-operation and partnership.

We need to hear your voices to help create legislation that will facilitate the preservation, promotion and revitalization of First Nations, Inuit and Métis languages. In the coming months, my Department, and I will be seeking your ideas on what would be important to consider in drafting the legislation.

The Government of Canada is committed to doing this with you. I am encouraged by the progress we have made to date and I look forward to hearing what you have to say.

The Honourable Mélanie Joly

# Building on What We Know

Over the past two decades there have been a number of legislative, policy and program initiatives in Canada, reports submissions and commissions recognizing the urgent need to preserve, promote and revitalize* First Nations, Inuit and Métis languages in Canada. These reports all cite the importance of language to culture.

The Royal Commission on Aboriginal Peoples (1996) noted that the number of Indigenous language speakers was, even then, far fewer than the Indigenous population, that the demographic of Indigenous language speakers was aging and that even the languages that were most frequently heard were in danger of extinction because of declining fluency among young people.

In 2005, the Task Force on Aboriginal Languages and Culture submitted a comprehensive report titled *Towards a New Beginning: A Foundational Report for a Strategy to Revitalize First Nation, Inuit and Métis Languages and Culture*. The report contained 25 recommendations aimed at providing advice to the Government of Canada to help preserve, revitalize and promote First Nation, Inuit and Métis languages and cultures.

Most recently, the Truth and Reconciliation Commissions Calls to Actions once again challenged the Government of Canada to recognize the need for legislation to meet this objective.

ROYAL COMMISSION ON ABORIGINAL PEOPLES

*"Language is one of the main instruments for transmitting culture from one generation to another and for communicating meaning and making sense of the collective experience."*

*"Aboriginal languages suffered a severe blow during the era when every child was forced by school policy to speak English or French."*[1]

REPORT OF THE TASK FORCE ON ABORIGINAL LANGUAGES AND CULTURE

*"We believe it is time for Canada to recognize that Canada's linguistic heritage runs deeper than the English and French Languages. It is, in fact, the oral histories, the stories of creation that explain how First Peoples came to be on this land, millennia before the French or English, and the songs and dances that speak to our connection with the land that give this fabric the unique texture and vibrancy that make it unlike any other fabric in the world. These national treasures must be protected for future generations".*[2]

*While the terms "preserve", "promote" and "revitalize" are used in relation to the intention of the Indigenous languages legislation, these terms are meant only to capture the basic intent and Canadian Heritage acknowledges that it can mean different things to different people. It is recognized that Indigenous communities and linguistic groups may be at varying stages of language vitality, and that this legislation will therefore need to be flexible enough to respond to the needs and priorities of each distinct group. The terms used throughout this guide are therefore meant only to begin a discussion about language vitality and needs, and should not be read as limiting the possible intent and impact of the legislation.

[1] **Royal Commission on Aboriginal Peoples (1996).** ***Highlights from the report of the Royal Commission on Aboriginal Peoples.*** **Minister of Supply and Services Canada. Government of Canada.**

[2] **The Task Force on Aboriginal Languages and Cultures (2005).** ***Towards a New Beginning A Foundational Report for a Strategy to Revitalize First Nation, Inuit and Métis Languages and Culture.*** **Canadian Heritage. Government of Canada. p 166**

**TRUTH AND RECONCILIATION COMMISSION OF CANADA: CALLS TO ACTION**

Language and culture

13. We call upon the federal government to acknowledge that Aboriginal rights include Aboriginal language rights.
14. We call upon the federal government to enact an Aboriginal Languages Act that incorporates the following principles:
    i. Aboriginal languages are a fundamental and valued element of Canadian culture and society, and there is an urgency to preserve them.
    ii. Aboriginal language rights are reinforced by the Treaties.
    iii. The federal government has a responsibility to provide sufficient funds for Aboriginal-language revitalization and preservation.
    iv. The preservation, revitalization, and strengthening of Aboriginal languages and cultures are best managed by Aboriginal people and communities.
    v. Funding for Aboriginal language initiatives must reflect the diversity of Aboriginal languages.
15. We call upon the federal government to appoint, in consultation with Aboriginal groups, an Aboriginal Languages Commissioner. The commissioner should help promote Aboriginal languages and report on the adequacy of federal funding of Aboriginal-languages initiatives.[3]

In addition to all of the domestic literature on the topic, a number of the Articles contained in the United Nations Declaration on the Rights of Indigenous Peoples advance language and culture rights, including language and education rights (set out in Annex A). The Declaration underscores the inter-related nature of Indigenous rights; in other words language rights are essential to the recognition of other rights set out in the Declaration, such as: rights to education; rights to self-determination, and rights to protect and revitalize Indigenous culture. The proposed First Nations, Inuit and Métis languages legislation is thus a cornerstone of the government's plan to fully implement the Declaration.

# Rationale for First Nations, Inuit and Métis Languages Legislation

In Canada, no Indigenous languages are considered to be safe. All Indigenous languages currently spoken in Canada fall within four degrees of endangerment.[4] In addition, the majority of the Inuit population in Canada speak an Indigenous language. The federal government has provided programmatic support and limited associated funding to address some of the issues related to Indigenous languages. Although program and policy support is an important measure, it does not necessarily provide for longer term certainty that could be created through legislation, such as the statutory creation and/or enhancement of institutional infrastructure (e.g.: dedicated Institutions and Commissioner).

In addition, legislation could include provisions that acknowledge the foundational importance of Indigenous peoples' languages to their cultures, identities and spirituality; prior Indigenous presence and the evolution of

[3] Truth and Reconciliation Commission of Canada, 2015. *Truth and Reconciliation Commission of Canada: Calls to Action*. p 2.
[4] Norris Research Inc., 2016. Revised and updated - 2006 Census-based, 2015 version of UNESCO 2009 Atlas of World's Languages in Danger.

their languages and contribution to Canada; the constitutional status and regional significance of Indigenous languages; the past harms inflicted on Indigenous languages through government policies and practices; and the need for multifaceted approaches as the means to preserve, promote and revitalize Indigenous languages could be considered.

National First Nations, Inuit, and Métis languages legislation could provide the policy, programmatic, and rights-based measures needed to adequately support the preservation, promotion and revitalization of First Nations, Inuit, and Métis languages so that they can be transmitted to future generations of speakers.

# About the Intensive Engagement

The intensive engagement will be conducted through direct/in-person engagement – "workout" type sessions convened with the First Nation, Inuit and Métis peoples throughout Canada, and indirect engagement – providing individuals and/or groups that are unable to attend in-person engagement sessions the opportunity to submit their feedback through a variety of means, i.e. online questions, written comments/submissions, electronic comments/submissions.

There are a number of Indigenous rights holders in Canada that have signed modern treaties, comprehensive land claims and/or self-government agreements. Although not all identical, these agreements generally include provisions relating to language and culture. A number of the agreements also include law-making jurisdiction over matters relating to language, culture and education. It is understood that the signatories to these agreements will have interests that are different from other groups. The engagement process will include seeking the views of these groups to ensure that the legislation is compatible with, and respectful of, the rights and law-making powers described in their agreements.

# Elements of Legislation that Facilitates the Preservation, Promotion and Revitalization of Indigenous Languages

1. In the early engagement, we heard that a 'pan-Indigenous' approach was not seen as appropriate given the significant differences in First Nations, Inuit and Métis language status and the corresponding divergence in approaches and priorities. Consequently, the structure of the legislation could include common elements that would affect First Nations, Inuit and Métis in the same way as well as distinct First Nations, Inuit and Métis language sections designed to address the distinct legislative needs and priorities of each language group.

Other considerations may include:

- discussing whether the terms "preservation", "promotion" and "revitalization" should be further defined to ensure common understandings; and
- whether the distinct parts of the legislation should be flexible enough to support provincial, territorial,

regional, community-based legislative, policy and program regimes that are intended to increase Indigenous language vitality.

2. The legislation should be consistent with and support the *Truth and Reconciliation Commission's Calls to Action* as well as the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*. As such, the legislation should recognize Indigenous languages as a right and acknowledge:

    - Indigenous languages as core to Indigenous peoples' identities, spiritual beliefs, relationships to lands, worldviews and culture;
    - that Indigenous languages are fundamental to self-determination;
    - the importance of Indigenous languages relative to healing and reconciliation;
    - harms against Indigenous languages and cultures through government laws, policies and actions; and
    - the significance of Indigenous peoples as the first peoples with first languages and that those languages have and will to continue to evolve over time.

    Provisions that reflect the recognition of Indigenous linguistic rights as those rights held by Indigenous peoples associated with development, use and transmission of their languages could be considered.

Other considerations may include:

- means to align federal legislation with provincial and territorial legislation relating to Indigenous language rights, such as laws declaring Indigenous languages as official languages in certain provinces or territories, while respecting provincial and territorial jurisdiction;
- whether provincial and territorial programs and policies (including education) that promote the provision of services in Indigenous languages could be reflected and supported in the legislation, including being applied more broadly within other jurisdictions;
- recognition that modern treaty, land claim and self-government agreements describe unique rights and, in some cases, law-making jurisdiction in the areas of langauge and culture and that any legislation would have to be compatible with, and respectful, of those agreements; and
- a whole-of-government (federal) approach to language preservation, promotion and revitalization which includes early childhood education, immersion education for all groups and other approaches working hand in hand for all age groups and languages in various stages of vitality, and in consideration of other entities that may have jurisdiction and authority in these areas.

3. The Act should provide a legal framework that can evolve and be amended to strengthen and address weaknesses and include provisions to initiate periodic reviews.

    This could take the form of appropriate provisions such as those related to specific periodic reviews, monitoring and reporting reflective of the desire to ensure that the legislation may be kept up to date with the evolving work of preserving, promoting and revitalizing Indigenous languages.

Other considerations may include:

- thinking about how and when reviews should be conducted, including who would be responsible for

carrying out reviews and who would receive any reports and associated recommendations;

- ensuring full and meaningful involvement of Indigenous peoples would have to be discussed; and
- the scope and purpose of any review e.g., a focus on the implementation of the legislation, including the effectiveness and efficiency of the act as well as any associated regulations, policies, programs and/or other matters.

4. The intent of the legislation should be to articulate specific language rights and provide the appropriate means and remedies for implementing them. Other institutional supports may be needed for a variety of functions at local, regional and national levels. Would a single entity meet the needs given the diversity of peoples, languages, geographic and jurisdictional considerations as well as the fact that in some jurisdictions legislation, commissioners and other oversight entities already exist?

   Multifaceted approaches for all age groups including, but not limited to the education system, regardless of their place of residence (lifelong learning) are essential for Indigenous peoples to restore fluency among Indigenous peoples of all ages. Each situation will be different in terms of what is required on the ground regarding methodologies for the most appropriate means to preserve, promote and revitalize languages. With this in mind, the legislation should have the flexibility to support a variety of approaches.

Other considerations may include:

- the challenge in achieving an ideal balance between appropriate oversight and maximizing funding to communities to address their priority interests;
- recognizing and leveraging the knowledge and capacity of existing organizations and mechanisms; and
- the role and function of any new entity or entities created for the purposes of support or oversight.

5. The Act should facilitate the creation of adequate, predictable, sustainable and long term support.

   Provisions could create mechanisms and policies that can be linked to adequate, predictable and sustained support to preserve, promote and revitalize Indigenous languages consistent with new fiscal relation approaches and that may be achieved through regulations and/or policies.

Other considerations may include:

- since "adequate, predictable, sustainable" funding will mean different things to different people, the engagement should include a discussion on methodologies for achieving this in a way that is perceived as both appropriate and equitable;
- other mechanisms such as regulations and policies that would support this objective;
- the potential for transitional measures; and
- how to involve modern treaty, land claim and self-government signatories in this discussion.

# Questions

Truth and Reconciliation Call to Action 13 states, "We call upon the federal government to acknowledge that Aboriginal rights include Aboriginal Language rights".

1. **WHAT SHOULD THE PRACTICAL IMPLICATIONS OF LEGISLATIVELY RECOGNIZING INDIGENOUS LANGUAGES AS A RIGHT BE (WHAT DOES RECOGNIZING INDIGENOUS LANGUAGES AS A RIGHT MEAN TO YOU AND HOW WOULD IT SUPPORT YOU IN YOUR DAY TO DAY LIFE)?**

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Within Canada, there are a number of existing regional and local Indigenous language organizations. Through the early engagement sessions, and the subsequent work of the Co-Development Working Group (comprised of members from Canadian Heritage, Assembly of First Nations, Inuit Tapiriit Kanatami and the Métis Nation), the importance of building the capacity of these existing entities has been noted as a key consideration, as has the concept of the establishment of a national oversight committee.

The interaction of established local/regional and a potential national entity is particularly relevant when considering the most effective way to support projects on the ground and foster the sharing of wise practices. Many regional and local organizations have established strong networks, and not only a deep knowledge of the varying regional and linguistic realities but the remedies for languages in various situations ranging from viable to near extinction (i.e., sleeping languages).

2. **WOULD THE CREATION OR ENHANCEMENT OF EXISTING INDIGENOUS LOCAL AND REGIONAL LANGUAGES INSTITUTIONS BE HELPFUL AND HOW?**

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In the 2005 *Towards a New Beginning: A Foundational Report for a Strategy to Revitalize First Nation, Inuit and Métis Languages and Cultures* Final Report by the Task Force on Aboriginal Languages and Cultures, it was recommended – based on feedback through their consultation process – that the key roles of a national language organization include: coordinating the research and planning for a long-term language strategy; increasing awareness of the importance of First Nation, Inuit and Métis languages; partnering with industry, governments and Indigenous peoples internationally; and, directing funds to communities.

There was consensus that the entity should be streamlined, non-political, with minimal infrastructure, that decision making should be delegated to the regional level, that immediate funding should be provided to communities with few remaining fluent speakers, and that communities should get funding for community-based research and long-term language planning. All agreed that multifaceted approaches to language should be a main program focus, with many also recommending that it coordinate a clearing house or clearing houses to allow sharing of resources and research on best practices.

### 3. HOW COULD A NATIONAL INDIGENOUS LANGUAGES INSTITUTION (MANAGED BY INDIGENOUS PEOPLE) BE HELPFUL IN SUPPORTING THE IMPLEMENTATION OF SPECIFIC RIGHTS AND WHAT ROLE SHOULD IT PLAY, PARTICULARLY IN SUPPORTING LOCAL AND REGIONAL ENTITIES? IS A NATIONAL INSTITUTION(S) NEEDED?

In some areas, local and regional Indigenous language entities are in place. It will be important that any contemplated national entity is complementary and supportive of local and regional entities. Agreements may be entered into between these entities to ensure effectiveness and minimize duplication of efforts.

Language Commissioners in Canada and internationally, are devoted to language issues. Often their roles and responsibilities are similar to those of an ombudsman. Language Commissioners work to promote, preserve, and implement language rights. They serve to protect language rights through monitoring and investigating the regulation of statutory public service provisions. Language Commissioners also inform government on language issues by providing reports and recommendations.

To date, Canada has not appointed a language commissioner to address Indigenous languages. However, Call to Action # 15 from the Truth and Reconciliation Commission calls upon the federal government "to appoint, in consultation with Aboriginal groups, an Aboriginal Languages Commissioner. The commissioner should help promote Aboriginal languages and report on the adequacy of federal funding of Aboriginal-languages initiatives."

### 4. WHAT ROLE WOULD YOU SEE BEING IMPORTANT FOR AN INDIGENOUS LANGUAGES COMMISSIONER(S)?

Over the years, international bodies and state governments have funded language promotion, which created awareness and acceptance of multilingualism as opposed to funding efforts designed to increase the number of fluent speakers or restoration of the natural intergenerational transmission of language.

Education and immersion programs have been seen as the solutions. Language revitalization scholars and champions, however, have learned that matching the language solution to the language situation works best. Education and immersion programs are not the solution for all language situations. Some language revitalization planners and champions have used the Fishman's Scale (Annex B), to determine where human and financial resources should be placed. In locales where there are few fluent speakers, for example, the mentor apprentice program is a main and relevant strategy for that language situation.

Equally as important is the need to undertake several strategies simultaneously in any one locale. The restoration of natural intergenerational language transmission means that all age groups need to be involved. For example, in a locale with certain amount of fluent speakers, there can be a pre-school immersion program, mentor apprentice, adult immersion and language documentation, all occurring simultaneously. This is what is meant by multi-faceted approaches.

### 5. HOW DO YOU THINK WE CAN BETTER PRESERVE, PROMOTE AND REVITALIZE INDIGENOUS LANGUAGES?

Since the Royal Commission on Aboriginal Peoples (RCAP), and through subsequent engagements with Indigenous peoples, including the 2005 Task Force on Aboriginal Languages and Cultures, Indigenous peoples have consistently recommended that funding should be increased to support language activities such as immersion programs and other pedagogical methods to various Indigenous communities across Canada, and have also emphasized alternative models of delivery and control of funding. In addition, the 2005 Task Force on Aboriginal Languages and Cultures report states that a national organization with regional decision making power should be created in order to flow funding directly to the communities.

The overarching message from the 2005 recommendations is to decentralize funding from the federal government to allot more control and decision making authority to Indigenous peoples.

6. **WHAT ARE YOUR VIEWS ON AN APPROACH TO FUNDING? HOW CAN INDIGENOUS COMMUNITIES BEST ACCESS FUNDING?**

# Share your views

Send your responses to the questionnaire, ideas, suggestions and reports by email to PCH.LLA-ILL.PCH@canada.ca or

By mail to:

Department of Canadian Heritage
Indigenous Languages Legislation
25 Eddy St., 12th Floor, Room 085
Gatineau, Quebec
K1A 0M5

## UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Article 2
Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3
Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 8
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
(d) Any form of forced assimilation or integration;
(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 11
1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 13
1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14
1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

**Suggested Interventions Based on Different Stages of Language Endangerment**

| Current Status of Language | | Suggested Interventions |
|---|---|---|
| Stage 8: | Only a few Elders speak the language. | Implement Hinton's (1994) "Language Apprentice" Model where fluent Elders are teamed one-on-one with young adults who want to learn the language. Dispersed, isolated Elders can be connected by phone to teach others the language... |
| Stage 7: | Only adults beyond childbearing age speak the language. | Establish "Language Nests" after the Maori and Hawaiian, models where fluent older adults provide pre-school child-care where children are immersed in their Indigenous language... |
| Stage 6: | Some intergenerational use of language. | Develop places in community where language is encouraged, protected, and used exclusively. Encourage more young parents to speak the Indigenous language in home with and around their young children. |
| Stage 5: | Language is still very much alive and used in community. | Offer literacy in minority language. Promote voluntary programs in the schools and other community institutions to improve the prestige and use of the language. Use language in local government functions, especially social services. Give recognition to special local efforts through awards, etc. |
| Stage 4: | Language is required in elementary schools. | Improve instructional methods utilizing TPR (total physical response)... TPR-Storytelling... and other immersion teaching techniques. Teach reading and writing and higher level language skills... Develop two-way bilingual programs where appropriate, where non-speaking elementary students learn the Indigenous language and speakers learn a national or international language. Need to develop Indigenous language text-books to teach literacy and academic subject matter content. |
| Stage 3: | Language is used in places of business and by employees in less specialized work areas. | Promote language by making it the language of work used throughout the community... Develop vocabulary so that workers in an office could do their day-to-day work using their Indigenous language... |
| Stage 2: | Language is used by local government and in the mass media in the minority community. | Promote use of written form of language for government and business dealings/records. Promote Indigenous language newsletters, newspapers, radio stations, and television stations. |
| Stage 1: | Some language use by higher levels of government and in higher education. | Teach tribal college subject matter classes in the language. Develop an Indigenous language oral and written literature through dramatic presentations and publications. Give tribal/national awards for Indigenous language publications and other notable efforts to promote Indigenous languages. |

Source: Adapted from Fishman's (1991, p. 88–109) Graded Intergenerational Disruption Scale for Threatened Languages, in Jon Reyhner, "Some Basics of Indigenous Language Revitalization," in Revitalizing Indigenous Languages, ed. by Jon Reyhner, Gina Cantoni, Robert N. St. Clair and Evangeline Parsons Yazzie (Flagstaff, Ariz.: Northern Arizona University,1999), at http://jan.ucc.nau.edu/~jar/RIL_Intro.html.